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June 8, 2023

VIA CM/ECF

Honorable Peggy Kuo
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Todd Bank v. Cogint, Inc., et al.*, Case No. 1:18-cv-03307

Dear Judge Kuo:

As counsel for Defendants in the referenced action, I submit the following pursuant to the February 7, 2023 minute entry (the “Order”).

The Order directed Defendants to advise the Court of ongoing efforts by the Federal Communications Commission (“FCC”) to provide interpretative guidance concerning the term “called party” for purposes of the Telephone Consumer Protection Act (“TCPA”).

On May 3, 2023, Maryland Governor, Wes Moore, signed SB 90 (“Stop the Spam Calls Act of 2023”) into law. The bill specifically defines “called party” to mean “a person who is a regular user of a telephone number that receives a telephone solicitation.” This definition is consistent with the definition in Oklahoma’s Telephone Solicitation Act, a statute whose enactment undersigned has previously advised the Court. The definition, as used in both laws, represents a narrower interpretation of the term “called party” as used by the FCC in at least one of its 2022 Consumer Guides. Given the potential conflict with federal law, and related preemption considerations, it is reasonable to anticipate that the FCC or other authority will offer additional guidance on the issues.

The anticipation that FCC will offer future guidance as to the appropriate interpretation of the term “called party” is buttressed by the agency’s continued issuance of press releases and related consumer information which make use the term “called party” without providing a definition, including releases in May 2023 related to Captioned Telephone Service (“CTS”) and Speech-to-Speech Relay Service (“STS”).

Additionally, the Court will also recall that undersigned previously advised that on July 12, 2022 a bill had been introduced in the United States House of Representatives by Congressman Raja Krishnamoorthi of Illinois entitled the Robotext Spam Prevention Act.¹ This bill has recently been referred to the Committee on Energy and Commerce. The proposed amendment to the Telephone Consumer Protection Act (“TCPA”) would alter section (b)(1)(A) as follows:

¹ [BILLS-117hr8334ih.pdf \(congress.gov\)](#).

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(b) RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.—

(1) PROHIBITIONS.—It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make ~~any call (other than a call made for emergency purposes or made with the prior express consent of the called party)~~ any call or send any text message (other than a call made or text message sent for emergency purposes or with the prior express consent of the recipient of such call or text message) using any automatic telephone dialing system or an artificial or prerecorded voice—

The proposed amendment conspicuously removes the term “called party” and replaces it with recipient. We expect the House Energy and Commerce Committee to take action on the bill during this session. To the extent that this bill is referred to the full House of Representatives, it should be expected that this material change to the statutory language will be the subject of considerable debate and commentary, offering valuable insight into the legislative intent concerning the proper interpretation of called party.

The recent activity at the federal legislative and agency level on issues related to telemarketing in general and the term “called party” specifically suggests that the matter remains unsettled but that lawmakers and regulators alike continue to work towards providing clarity to interested parties. For that reason, any forthcoming action or guidance is likely to have a material impact on the core issues in this matter and, as a result, continuing the stay is appropriate and proper.

Thank you for your attention to this matter and please feel free to have any member of your judicial staff contact my office with any questions or concerns regarding the foregoing.

Respectfully submitted,

/s/ Neil E. Asnen
Neil E. Asnen

cc: Todd Bank, Plaintiff *pro se* via CM/ECF